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In the Supreme Court of the United States

OCTOBER TERM, 1927

No. 283

THE UNITED STATES, PETITIONER

v.

MAGNOLIA PETROLEUM COMPANY, E. R. BROWN, R. Waverly Smith, et al., etc.

ON PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF CLAIMS

BRIEF FOR THE UNITED STATES IN SUPPORT OF THE PETITION

OPINION BELOW

The opinion of the Court of Claims (R. 37) is not yet reported.

JURISDICTION

The judgment of the Court of Claims was entered February 14, 1927. (R. 40.) A motion for a new trial was entertained and was overruled on March 7, 1927. (R. 40.) The petition for certiorari was filed June 6, 1927. The jurisdiction of this Court rests on Section 3(b) of the Act of February 13, 1925.

THE QUESTION PRESENTED

The principal question is whether interest on refunds of taxes should be computed on the basis prescribed by the Revenue Act of 1921, or on that prescribed by the Revenue Act of 1924, where the refund was allowed and the principal paid while the 1921 Act was in effect but the computation and payment of the interest was delayed until after the passage of the 1924 Act.

THE STATUTES INVOLVED

The Revenue Act of 1921, c. 136, 42 Stat. 227, 316 (see U. S. C., Title 28, Sec. 284) provides:

> **Interest on Refunds and Judgments**
>
> SEC. 1324(a). That upon the allowance of a claim for the refund of or credit for internal revenue taxes paid, interest shall be allowed and paid upon the total amount of such refund or credit at the rate of one-half of 1 per centum per month to the date of such allowance, as follows: (1) if such amount was paid under a specific protest setting forth in detail the basis of and reasons for such protest, from the time when such tax was paid, or (2) if such amount was not paid under protest but pursuant to an additional assessment, from the time such additional assessment was paid, or (3) if no protest was made and the tax was not paid pursuant to an additional assessment, from six months after the date of filing of such claim for refund or credit. The term "additional

assessment" as used in this section means a further assessment for a tax of the same character previously paid in part.

(b) Section 177 of the Judicial Code is amended to read as follows:

"SEC. 177. No interest shall be allowed on any claim up to the time of the rendition of judgment by the Court of Claims, unless upon a contract expressly stipulating for the payment of interest, except that interest may be allowed in any judgment of any court rendered after the passage of the Revenue Act of 1921 against the United States for any internal-revenue tax erroneously or illegally assessed or collected, or for any penalty collected without authority or any sum which was excessive or in any manner wrongfully collected, under the internal-revenue laws."

The Revenue Act of 1924, c. 234, 43 Stat. 253, 346 (see U. S. C., Title 26, Sec. 153), provides as follows:

Interest on Refunds and Credits

SEC. 1019. Upon the allowance of a credit or refund of any internal-revenue tax erroneously or illegally assessed or collected, or of any penalty collected without authority, or of any sum which was excessive or in any manner wrongfully collected, interest shall be allowed and paid on the amount of such credit or refund at the rate of 6 per centum per annum from the date such tax, penalty, or sum was paid to the date of the allowance of the refund, or in case of a credit, to the

due date of the amount against which the credit is taken, but if the amount against which the credit is taken is an additional assessment, then to the date of the assessment of that amount. The term "additional assessment" as used in this section means a further assessment for a tax of the same character previously paid in part.

STATEMENT

This case presents a dispute over the basis for computing interest on refunds of taxes for the years 1916 and 1917. The refunds were allowed in October, 1923 (R. 27), and in November, 1923, certificates of overassessment in respect of the years 1916 and 1917 were issued to the taxpayer, and in that month the principal amount of the refunds was paid in full. The letters of the Commissioner of Internal Revenue transmitting the payments contained the statement "interest status will be determined as soon as necessary data can be assembled." (R. 28–31.)

The Revenue Act of 1924, which changed the basis for computing interest, was passed June 2, 1924. On January 18, 1924, the Commissioner of Internal Revenue notified the plaintiff that interest had been allowed in the sum of $34,737.15, computed in accordance with Section 1324 of the Revenue Act of 1921, then in force. (R. 31.) Owing to differences with the taxpayer respecting the interest matter, final determination of the interest was not made until July, 1924, and on the 21st day of July, 1924,

the taxpayer was paid $35,369.05, the amount of interest determined by the Commissioner to be owing under the provisions of the 1921 Act. (R. 34.) The 1921 Act makes a distinction between cases where a specific protest was made at the time of payment of the tax and cases where no protest was made. The taxes for the year 1916 were not paid under protest. (R. 24.) The taxes for the year 1917 were paid, accompanied by a protest, as follows (R. 25):

> The Magnolia Petroleum Company hereby protests against the payment of income taxes which are alleged to be imposed by the act approved September 8, 1916, as amended by the act approved October 3, 1917, and the war income-tax act embodied in said act approved October 3, 1917, and the war excess profits tax act embodied in said act approved October 3, 1917. The said company protests against the payment of said taxes in the amount of $1,966,600.87, or in any other amount at this time or any other time, and said taxes are paid by the company under protest, involuntarily and under duress, in order to avoid the penalties as prescribed in said acts for nonpayment which the collector of internal revenue for this district states he will enforce against said company in the event payment is not made. The grounds, among others, of such protest and involuntary payments, are that said acts are unconstitutional and void, their terms ambiguous and uncertain; that the Magnolia Petroleum

> Company is not a corporation, joint-stock company, or association or insurance company within the meaning and intendment of said acts; the regulations which have been attempted to be prescribed under said acts are not authorized thereby and that the method of applying the rates of taxation as is attempted in article 16 and in other articles of said regulations under the war excess profits tax law is arbitrary and unjust, and without sanction in said act.

The Court of Claims found that this protest was general in terms and not specific or detailed (R. 32), and that the protest did not specify the basis on which the refund for the year 1917 was afterwards claimed and made (R. 32–33).

The Court of Claims held that it was immaterial that no protest accompanied the payment of the 1916 tax, or that the protest accompanying the payment of the 1917 tax was insufficient, because, although the refund was allowed and the principal paid before the enactment of the 1924 Act, the interest was not finally determined and paid until after the passage of that Act, and under the 1924 Act interest was to be computed from the date of payment of the tax regardless of whether a protest was filed.

A more detailed statement of the facts, and the specification of errors will be found in the petition for certiorari. (R. 1.)

ARGUMENT

THE BASIS FOR COMPUTING THE INTEREST ON THE REFUND IS THAT PRESCRIBED IN THE REVENUE ACT OF 1921, WHICH WAS IN FORCE WHEN THE REFUND WAS ALLOWED AND THE PRINCIPAL PAID. THE ENACTMENT OF THE 1924 ACT BEFORE THE INTEREST WAS COMPUTED AND PAID DID NOT OPERATE TO CHANGE THE BASIS FOR COMPUTING THE INTEREST

The Revenue Act of 1924 provides that interest on refunds shall be computed from the date the tax was paid.

The Revenue Act of 1921 provides that the interest shall be computed from the time when the tax was paid if the tax was paid "under a specified protest setting forth in detail the basis of and the reasons for such protest," but if not paid under protest or pursuant to an additional assessment, interest is computed from a date six months after the date of filing claim for refund. The rate is the same in either case.

In the case at bar the 1916 tax was paid without any accompanying protest, and the payment of the 1917 tax was accompanied by a protest which was general and not specific and which did not specify any ground on which the refund was ultimately claimed and paid. The Court of Claims allowed interest computed from the dates of payment of the taxes for each year on the theory that the 1924 Act was applicable. If the 1921 Act was applicable, obviously interest was computed from the wrong

date and the amount allowed by the Court of Claims was too much. The refunds were allowed in October, 1923, and the principal amount of the refunds was paid to the taxpayer in November, 1923, the matter of interest on the refunds being reserved for later determination. The interest was not finally ascertained and paid until after the Revenue Act of 1924 was enacted.

Upon the allowance of the refund the taxpayer immediately became entitled to the allowance and payment of interest. The right to interest arose at the time of the allowance of the refund and is to be determined by the law in force at that time. A cause of action for interest on the basis fixed by the 1921 Act arose at the time the refunds were allowed, and then became a fixed liability of the United States, and there is nothing whatever to support the decision of the Court of Claims that this right was changed and increased liability for interest resulted because payment of the interest on the refund was delayed until after the 1924 Act became effective. There is nothing whatever in the Act of 1924 to indicate that it was the intention of Congress that on a claim for refund allowed and the principal of which was paid before its passage interest should be computed on any different basis than that fixed by law at the time the claim was allowed.

CONCLUSION

The decision in this case controls a large number of cases pending in the Bureau of Internal Revenue

involving very large sums, and is opposed to the established practice and rulings of the Bureau. There seems to be no basis for the decision of the court below that although the refund was allowed and the principal paid when the 1921 Act was in force, and the right to interest thus became fixed, that right was changed and an increased liability for interest resulted because the payment of the interest was deferred until after the passage of the 1924 Act.

It is respectfully submitted that the petition for the writ of certiorari should be granted.

Respectfully submitted.

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JUNE, 1927.

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JURISDICTION

The judgment of the Court of Claims was entered February 14, 1927. (R. 40.) A motion for a new trial was entertained and denied on March 7, 1927. (R. 40.) The petition for certiorari was filed June 6, 1927 (R. 40), and allowed October 17, 1927 (R. 41). The jurisdiction of this Court rests on Section 3 (b) of the Act of February 13, 1925.

QUESTIONS PRESENTED

The Revenue Act of 1921 provided that interest on refunds of taxes should be computed from a date six months after filing claim for refund, unless payment of the tax was made under specific protest, in which case interest was to be computed from date of payment.

The Revenue Act of 1924 provided that in all cases interest should be computed from date of payment of the tax.

The principal question is whether interest on refund of taxes for 1916 and 1917 should be computed on the basis prescribed by the Revenue Act of 1921 or on that prescribed by the Revenue Act of 1924, where the refund was allowed and the principal paid while the 1921 Act was in effect but the computation and payment of interest was delayed until after the passage of the 1924 Act.

If the 1921 Act be held to apply, then a further question arises and that is whether the protest filed when the tax for 1917 was paid was sufficient to bring into operation as to the refund of taxes for 1917 that provision of the 1921 Act allowing interest on refunds from the date of payment of taxes.

STATUTES INVOLVED

Section 1324 (a) of the Revenue Act of 1921, c. 136, 42 Stat. 227, 316, provides:

> "That upon the allowance of a claim for the refund of (or credit for) internal revenue taxes paid, interest shall be allowed and

paid upon the total amount of such refund or credit at the rate of one-half of 1 per centum per month to the date of such allowance as follows: (1) if such amount was paid under a specific protest setting forth in detail the basis of and reasons for such protest, from the time when such tax was paid, or (2) if such amount was not paid under protest but pursuant to an additional assessment, from the time such additional assessment was paid, or (3) if no protest was made and the tax was not paid pursuant to an additional assessment, from six months after the date of filing of such claim for refund or credit. The term "additional assessment" as used in this section means a further assessment for a tax of the same character previously paid in part.

The Revenue Act of 1924, in Section 1019, c. 234, 43 Stat. 253, 346 (U. S. C., Title 26, Sec. 153), provides:

> Upon the allowance of a credit or refund of any internal-revenue tax erroneously or illegally assessed or collected, or of any penalty collected without authority, or of any sum which was excessive or in any manner wrongfully collected, interest shall be allowed and paid on the amount of such credit or refund at the rate of 6 per centum per annum from the date such tax, penalty, or sum was paid to the date of the allowance of the refund, or in case of a credit, to the due date of the amount against which the credit is taken, but if the amount against

which the credit is taken is an additional assessment, then to the date of the assessment of that amount. The term "additional assessment" as used in this section means a further assessment for a tax of the same character previously paid in part.

The material parts of Section 1100 of the Revenue Act of 1924 (43 Stat. 352, 353; U. S. C., Title 26, Secs. 1260, 1261) are:

(a) The following parts of the Revenue Act of 1921 are repealed, to take effect (except as otherwise provided in this Act) upon the enactment of this Act, subject to the limitations provided in subdivisions (b) and (c):

* * * * *

(b) The parts of the Revenue Act of 1921 which are repealed by this Act shall (except as provided in sections 280 and 316 and except as otherwise specifically provided in this Act) remain in force for the assessment and collection of all taxes imposed by such Act, and for the assessment, imposition, and collection of all interest, penalties, or forfeitures which have accrued or may accrue in relation to any such taxes, and for the assessment and collection, to the extent provided in the Revenue Act of 1921, of all taxes imposed by prior income, war-profits, or excess-profits tax acts, and for the assessment, imposition, and collection of all interest, penalties, or forfeitures which have accrued or may accrue in relation to any such taxes. In the case of any tax imposed by any part of the Revenue Act of 1921

repealed by this Act, if there is a tax imposed by this Act in lieu thereof, the provision imposing such tax shall remain in force until the corresponding tax under this Act takes effect under the provisions of this Act.

(c) The repeal of Title II and Title IV of the Revenue Act of 1921 shall not be construed to take away the retroactive benefits allowed by paragraph (12) of subdivision (a) of section 214 or paragraph (14) of subdivision (a) of section 234, of the Revenue Act of 1921, or by section 401 or 403 of such Act.

STATEMENT

This case presents a question as to the date from which interest should be computed on refunds of income and excess profits taxes for 1916 and 1917. At the time the refunds were allowed and the principal amounts thereof paid the Revenue Act of 1921 was in force. At the time interest on the refunds was finally computed and paid the Revenue Act of 1924 was in force. The two Acts provide a different basis for calculating interest on refunds, although the rate of interest is the same in both Acts. The Act of 1924 provides that interest on refunds shall be computed in all cases from the date the taxes were paid. The Act of 1921 provides that interest shall be computed from the date the taxes were paid if paid "under a specific protest setting forth in detail the basis of and reasons for such protest," but if not paid under protest or pursuant to an additional assessment,

interest on the refund shall be computed from a date six months after the filing of the claim for refund. In this case no protest of any kind was made when the 1916 tax was paid, and the United States claims that the protest made on payment of the 1917 tax was insufficient. The United States contends that the 1921 Act applies and that in accordance with the provisions of Section 1324(a) thereof, interest was properly computed by the Commissioner of Internal Revenue from a date six months after the filing of the claim for refund. On the other hand, respondent contends and the Court of Claims held, that the 1924 Act applies and that, in accordance with the provisions of Section 1019 thereof, respondent is entitled to interest computed from the date the taxes were paid.

The facts are set forth in great detail in the findings of the court below. Those essential to a decision of the question as to which Act applies may be summarized as follows: On original and amended returns for the year 1916, filed March 27, 1917, and June 15, 1917, respectively, respondent, a joint stock association, paid *without protest* a total income tax of $215,852.72. Thereafter, on June 17, 1918, a second amended return for the same year, indicating an overpayment of $30,217.11, was filed, accompanied by a claim for refund in that amount. Subsequently, on September 20, 1920, a third amended return for 1916, indicating a tax liability of $101,287.28, was filed, accompanied by a claim

for a refund of $114,565.44 or "such greater amount as is legally refundable." (R. 24–25.)

Original and amended income and excess profits tax returns for the year 1917 were filed by respondent on May 18, 1918, and May 27, 1918, respectively, indicating a liability of $1,966,600.87, which amount respondent paid on June 15, 1918, *under protest,* a copy of which is set forth in the findings (R. 25), and which does not appear to state any ground on which refund was finally allowed (R. 31). Thereafter, on January 28, 1919, a second amended return for 1917 was filed, indicating an additional tax liability of $5,390.17, which was never assessed or paid. On June 12, 1920, respondent filed a claim for refund of the total amount paid for 1917. Subsequently, on September 20, 1920, a third amended return, indicating a total 1917 liability of $961,081.45, was filed, accompanied by a claim for refund in the amount of $1,005,519.42 or "such greater amount as is legally refundable." (R. 25–27.)

In due course the Commissioner of Internal Revenue acted on the various claims for refund, and on October 8, 1923, notified respondent that such claims would be allowed in the sum of $105,571.95, for the year 1916, and in the sum of $1,131,075.86 for the year 1917. (R. 31.) On October 11, 1923, the claims were actually allowed by the Commissioner in these amounts. On November 22, 1923, separate certificates of overassessment, accompanied by Treasury warrants in the amounts al-

lowed, were received by respondent. Each included a statement that "interest status will be determined as soon as necessary data can be assembled." (R. 27–30.)

On January 18, 1924, the Commissioner advised respondent of the determination of the amount of interest due upon the refunded amounts. As a result of respondent's exception to the amount thereof, the Commissioner addressed to him another letter, dated February 9, 1924, overruling his claim for additional interest. Respondent appealed from the Commissioner's conclusions. These events all occurred prior to the passage on June 2, 1924, of the 1924 Revenue Act. After the passage of that Act and on July 2, 1924, the Commissioner finally advised respondent that interest was payable in the amounts indicated in his letter of January 18, 1924, except that by reason of an error as to the date of the claim for refund of 1917 taxes the interest thereon began to run from an earlier date. Accordingly, on July 18, 1924, Treasury warrant was issued in the sum of $35,369.05, representing an interest allowance of $19,171.21 on the refund of 1916 taxes and $16,197.84 on the refund of 1917 taxes. Respondent indorsed this warrant without prejudice to the institution of suit for the recovery of additional amounts of interest theretofore claimed in its printed brief filed with the Commisioner on February 23, 1924. Subsequently this suit was instituted for the recovery of $365,799.42 additional

interest. (R. 30–36.) The Court of Claims gave judgment for this amount (R. 40), on the theory that Section 1019 of the 1924 Act, rather than Section 1324 (a) of the 1921 Act, applied.

Other facts bearing on the determination of the subsidiary question, whether the protest made on payment of 1917 taxes was sufficient under the 1921 Act to start interest running from the date of payment, are dealt with in the branch of the argument herein treating of that question, and in order to avoid repetition they will not be duplicated at this point.

SPECIFICATION OF ERRORS TO BE URGED

The Court of Claims erred:

1. In holding that the Revenue Act of 1924 prescribed the method of calculation of interest payable on the refunds of 1916 and 1917 taxes allowed in 1923.

2. In finding that the payment of the 1917 tax was accompanied by a specific protest sufficient to make interest on the refund run from the date of payment of the tax.

SUMMARY OF ARGUMENT

The United States contends that the statute in effect at the time of the allowance of the claim for refund determined the basis for the calculation of interest thereon. At the time the refund was allowed in this case the Revenue Act of 1921 was in force. The rights of the parties then became fixed.

The fact that the interest thereon was not computed and paid until after the passage on June 2, 1924, of the Revenue Act of 1924 does not operate to give respondent the benefit of the more liberal basis provided in that Act for the calculation of interest on such refunds. In dealing with interest on refunds, the Act of 1924 is entirely prospective in operation. It applies only to refunds allowed after its passage. A retroactive interpretation of a revenue law is always to be avoided. This position of the United States accords with the decisions of this Court in *Girard Trust Company* v. *United States*, 270 U. S. 163; *Blair* v. *Birkenstock*, 271 U. S. 348; *Texas & Pacific Ry.* v. *Anderson*, 149 U. S. 237.

If, as respondent contends, the 1924 Act repealed, as to interest on refunds allowed prior to its passage, the provisions of the 1921 Act, so as to take away the right to interest under the Act of 1921, it left the respondent without any right to interest. The better view is that the right to interest which became fixed by the allowance of the refund while the 1921 Act was in effect was not divested or changed by the 1924 Act or by repeal of the 1921 Act.

If this Court concludes that the 1921 Act applies, the remaining question is whether the protest filed with payment of the 1917 tax was sufficient. It was general in its terms and stated no ground for refund which the findings identify as forming a basis for the allowance of the refund. The allowance of re-

fund for 1917 was in part on grounds not raised either in the protest or claim for refund, and in part on grounds first raised in a third amended claim for refund. Under these circumstances the protest was not sufficient under the 1921 Act to entitle the taxpayer to interest from date of payment of the tax.

ARGUMENT

I

THE BASIS FOR COMPUTING THE INTEREST ON THE REFUND IS THAT PRESCRIBED BY THE REVENUE ACT OF 1921, WHICH WAS IN FORCE WHEN THE REFUND WAS ALLOWED AND THE PRINCIPAL PAID. THE ENACTMENT OF THE 1924 ACT BEFORE THE INTEREST WAS COMPUTED AND PAID DID NOT OPERATE TO CHANGE THE BASIS FOR COMPUTING THE INTEREST

This Court, in *Girard Trust Company* v. *United States*, 270 U. S. 163, held that the date of the allowance of the refund within the meaning of Section 1324 (a) of the Revenue Act of 1921 is the date of final approval by the Commissioner of Internal Revenue of the amount to be refunded. In the case at bar the findings of the court below show that the Commissioner finally approved the refund on October 11, 1923. (R. 28.) Upon the approval on that date respondent's right to interest became fixed in accordance with the law then in force, which was the Revenue Act of 1921. The mere fact that the computation of the interest upon this fixed liability was not made until after the passage of Section 1019 of the Revenue Act of 1924 is of no importance.

There is no indication in the 1924 Act that Congress intended Section 1019 thereof to have a retroactive effect on refunds allowed prior to its passage. The Act provides that "*upon the allowance* of a * * * refund * * * interest *shall be allowed* and paid * * * from the date such tax * * * was paid." (Italics ours.) This clearly refers to allowances of refunds made after the passage of the Act.

The respondent contends that the Act of 1924 repealed the provisions of the 1921 Act, fixing the basis for allowance of interest on refunds. In Section 1100 of the Act of 1924 it was provided:

> The following parts of the Revenue Act of 1921 are repealed, to take effect (except as otherwise provided in this Act) upon the enactment of this Act, subject to the limitations provided in subdivisions (b) and (c) * * * Sections * * * 1324 * * *.

Subdivisions (b) and (c) provide that certain portions of the Act of 1921 which are repealed shall remain in effect for the assessment and collection of taxes and for "the assessment, imposition, and collection of all interest, penalties, or forfeitures which have accrued or may accrue in relation to any such taxes," and it may be contended that the interest referred to in this saving clause is interest owing to the Government and not to the taxpayer, but the obvious purpose of Congress was to preserve the operation of the 1921 Act on tax cases determined while it was in force. The words in

the repealing provisions of Section 1100 of the Act of 1924 that the repeal is "to take effect * * * upon the enactment of this Act" were surplusage, if they did not mean that the repeal should not be effective as to rights becoming fixed prior to the passage of the 1924 Act.

In any event, if the 1924 Act repealed the provision for interest on refunds allowed while the 1921 Act was in effect, it did not substitute the provisions of the 1924 Act in respect of such refunds. It is clear that the provisions for the allowance of interest on refunds contained in the 1924 Act only operated prospectively on allowances of refunds made after its passage, and if, as contended by the respondent, the provisions of the 1921 Act respecting interest on refunds allowed while it was in effect were wiped out completely by the 1924 Act, the result would be that the respondent was not entitled to any interest because the repeal took place before the interest was paid. Of course, we do not contend for that, because the repealing provisions of the 1924 Act should not be construed to divest a right to interest in favor of the respondent or remove the liability therefor of the Government which became fixed and definite upon the allowance of the refund while the 1921 Act was in effect.

In *Steamship Company* v. *Joliffe*, 2 Wall. 450, where a statute giving a pilot the right to half-pilotage fees on tender and refusal of his services, had been repealed after the services were tendered but

before the fees were collected or paid, the Court said (p. 457):

> When a right has arisen upon a contract, or a transaction in the nature of a contract authorized by statute, and has been so far perfected that nothing remains to be done by the party asserting it, the repeal of the statute does not affect it, or an action for its enforcement. It has become a vested right which stands independent of the statute. And such is the position of the claim of the plaintiff below in the present action: the pilotage services had been tendered by him; his claim to the compensation prescribed by the statute was then perfect, and the liability of the master or owner of the vessel had become fixed.

See also *Twenty per Cent. Cases*, 20 Wall., 179, 187.

A retroactive construction of a Revenue Act is always to be avoided. *Blodgett* v. *Holden*, No. 154, October Term, 1927, decided November 21, 1927; *Nichols* v. *Coolidge*, No. 88, October Term, 1926, decided May 31, 1927 (47 Sup. Ct. Rep. 710); *Shwab* v. *Doyle*, 258 U. S. 529.

The contention that the Revenue Act in effect at the time of the allowance of the claim for refund is the Act to be applied for the purpose of computing interest is also in harmony with the decision of this Court in *Blair* v. *Birkenstock*, 271 U. S. 348, in which it was held that where a claim for refund was allowed subsequent to the taking effect

of the 1924 Act the allowance of interest must be in accordance with the provisions of that Act.

In a different connection but embodying the same principle this Court in *Texas & Pacific Railway* v. *Anderson*, 149 U. S. 237, held that where a judgment had been rendered which included interest at the rate fixed by the laws of Texas at the time of the rendition thereof, and while the case was pending on appeal the laws of Texas were changed providing for a different rate of interest, the rate prevailing at the time of the entry of the judgment was the proper rate, unaffected by the change in the statute, the change in such law in that respect operating only prospectively.

The position of the United States in this case is likewise in accord with the rule established by numerous decisions of this Court that interest is not to be allowed against the United States except where there is clear statutory authority therefor. *United States* v. *Sherman*, 98 U. S. 565, 567; *Angarica* v. *Bayard*, 127 U. S. 251, 260; *United States* v. *New York*, 160 U. S. 598, 619. In the absence of a clear expression of legislative intent to effect such purpose, which is the case here, it would depart from that principle to hold that the more liberal allowance of interest provided in the 1924 Act applied retroactively to refunds allowed under the 1921 Act.

Upon these considerations the conclusion would follow that the 1924 Act has no application to the computation of interest in this case. Since the judgment of the Court of Claims includes the allowance of interest on taxes paid for the year 1916 from the date of payment and admittedly no protest was filed as to such year (R. 24), as was necessary under the Revenue Act of 1921, to entitle the taxpayer to interest from the date of payment, judgment should be reversed.

II

THE PROTEST FILED WHEN THE 1917 TAX WAS PAID WAS INSUFFICIENT, IF THE 1921 ACT APPLIES, TO ENTITLE THE RESPONDENT TO INTEREST ON THE REFUND FROM THE DATE OF PAYMENT OF THE TAX

This question as to the sufficiency of the protest accompanying the payment of the 1917 tax to entitle the respondent to interest on the refund computed from the date of payment, is directly raised by the findings and in the petition for certiorari. (R. 5.)

The Court of Claims states in its opinion that because the case was believed to be controlled by the Revenue Act of 1924 it was not necessary to determine the question as to the sufficiency of the protest filed with the payment of the 1917 taxes (R. 39), but its findings may have gone further than the opinion. In Finding V (R. 25) it is stated that payment of the 1917 tax "was accom-

panied by a written specific protest which set forth in detail the basis of and reasons for such protest." In the next sentence in the findings it is stated:

> Such protest was in words and figures as follows,

and then is set forth the protest itself. The material part of the protest is as follows:

> The grounds, among others, of such protest and involuntary payments, are that said acts are unconstitutional and void, their terms ambiguous and uncertain; that the Magnolia Petroleum Company is not a corporation, joint-stock company, or association or insurance company within the meaning and intendment of said acts; the regulations which have been attempted to be prescribed under said acts are not authorized thereby and that the method of applying the rates of taxation as is attempted in article 16 and in other articles of said regulations under the war excess profits tax law is arbitrary and unjust, and without sanction in said act.

The findings further show that this protest did not include any grounds on which the refund of 1917 taxes was afterwards made, and show that of the refund allowed for 1917 $1,025,519.52 was allowed on grounds not mentioned either in the protest made when the tax was paid or even in the claims for refund (R. 31), and that $105,556.34, the entire balance of the refund for 1917, was based on grounds not mentioned in the protest, but first

raised in the third amended return and claim for refund filed in 1920 (R. 27, 31). These specific findings as to the form of protest and as to the grounds on which the refund was finally allowed should be considered to overturn the general finding (R. 25) that the payment of the 1917 tax was accompanied by a written specific protest, setting forth in detail the basis of and reasons for such protest.

In *Girard Trust Company* v. *United States* (270 U. S. 163, 172), it was said:

> The Government's contention is that the distinction made in Section 1324, by which the interest to be paid on refunded taxes is to date from the payment of the taxes in cases where there is a specific protest setting forth in detail the basis and reasons for such protest, and by which the interest is to be dated only from six months after the date of filing the claim for refund or credit when there is no protest, was intended to favor those who furnished to the collecting officers by way of specific protest a valid basis for a refund of the taxes.
>
> We agree with this view. To hold otherwise would be to invite a protest on any pretended ground by taxpayers in every case of payment and would make the protest of no value to the Treasury or the collecting officers. A protest is for the purpose of inviting attention of the taxing officers to the illegality of the collection, so that they may take

remedial measures at once. But if protests are based on reasons of no validity, they do not accomplish the public purpose for which they are devised.

In the present case, the protest was based on a decision of the District Court of Connecticut made December 16, 1920. *Brewster* v. *Walsh*, 268 Fed. 207. That case was reversed in *Walsh* v. *Brewster*, 255 U. S. 536, March 28, 1921, or more than two months before the payment of the June 15 installment by the trustees. The statement added under the June 15 installment was merely a recital that an investigation was going on between the Government and the trustees, and that if that turned out to be in excess of the right amount, the payment was without prejudice to the recovery of the excess. This was certainly not a protest for specific reasons in accordance with the requirement of the statute. For these reasons, we think that no recovery can be had for failure to allow interest for the period of the six months after the date of payment.

Of course, no matter how specific the protest may be, if it does not state a ground on which a claim for refund can be or is allowed, it is insufficient to entitle the taxpayer to interest from the date the tax was paid.

It is plain that the protest in this case does not meet the test laid down in the *Girard Trust Company case*.

CONCLUSION

For the aforegoing reasons, it is respectfully submitted that the judgment of the Court of Claims should be reversed and the case remanded for further proceedings.

Respectfully submitted.

WILLIAM D. MITCHELL,
Solicitor General.
HERMAN J. GALLOWAY,
Assistant Attorney General.
SEWALL KEY,
Attorney.

DECEMBER, 1927.

○

CONCLUSION

For the aforegoing reasons, it is respectfully submitted that the judgment of the Court of Claims should be reversed and the case remanded for further proceedings.

Respectfully submitted.

WILLIAM D. MITCHELL,
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Assistant Attorney General.
SEWALL KEY,
Attorney.

DECEMBER, 1927.

○

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IN THE

Supreme Court of the United States

No. 283.

OCTOBER TERM, 1927.

THE UNITED STATES, *Petitioners,*

vs.

MAGNOLIA PETROLEUM COMPANY, E. R. BROWN, R. WAVERLEY SMITH, ET AL., ETC.

ON A PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF CLAIMS.

BRIEF IN OPPOSITION TO THE PETITION.

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Dallas, Texas,
Of Counsel.

Dated August 6, 1927.

PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

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IN THE

Supreme Court of the United States

No. 283.

October Term, 1927.

The United States, *Petitioners*,

vs.

Magnolia Petroleum Company, E. R. Brown, R. Waverley Smith, et al., etc.

ON A PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF CLAIMS.

BRIEF IN OPPOSITION TO THE PETITION.

OUTLINE OF BRIEF.

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The petition should be denied because:

(A) RESPONDENT, AS HELD BY THE COURT BELOW, IS ENTITLED TO INTEREST UNDER SECTION 1019 OF THE REVENUE ACT OF 1924 UPON THE TOTAL REFUNDS FROM THE DATES THE TAXES WERE PAID TO THE DATE OF THE ALLOWANCE OF THE CLAIMS	17
(B) EVEN THOUGH SECTION 1324(A) OF THE REVENUE ACT OF 1921 WERE APPLICABLE, AS ALLEGED BY THE COMMISSIONER OF INTERNAL REVENUE, RESPONDENT HAS FULLY MET THE REQUIREMENTS OF THAT SECTION	26
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CORRECTION OF ERRORS IN PETITION AND IN PETITIONERS' BRIEF.

The court would obtain an erroneous conception of both the pertinent facts and the statutes applicable in this case if it relied solely upon the petition and supporting brief. We will be specific.

First referring to the petition. There were no such provisions contained in the Revenue Act of 1921 [Sec. 1324(a)] as those alleged and placed in quotation marks in "B" of the petition (R. 1). That subparagraph of the Revenue Act of 1921 provided as follows:

> Sec. 1324(a). That upon the allowance of a claim for the refund of or credit for internal revenue taxes paid, interest shall be allowed and paid upon the total amount of such refund or credit at the rate of one-half of 1 per centum per month to the date of such allowance, as follows (1) if such amount was paid under a specific protest setting forth in detail the basis of and reasons for such protest, from the time when such tax was paid, or (2) if such amount was not paid under protest but pursuant to an additional assessment, from the time such additional assessment was paid, or (3) if not protest was made and the tax was not paid pursuant to an additional assessment, from six months after the date of filing of such claim for refund or credit. The term "additional assessment" as used in this section means a further assessment for a tax of the same character previously paid in part.

In "C" of the petition (R. 2) in paragraph designated "First" reference is made to the "protests" which were filed when the taxes were paid. There is

a similar reference in "D" of the petition (R. 2). There was but one protest. As shown by Finding of Fact II (R. 24) the taxes for the year 1916 "were not paid under protest." By Finding of Fact V (R. 25) the taxes for the year 1917, the only other year here involved, were paid under protest.

This record contains no justification for the designation of respondent's formal protest as a "letter" as is done in petitioners' second assignment of error (R. 5). The protest is set forth in full in Finding of Fact V (R. 25).

Under "Reasons for Granting Writ" (R. 5) the first reason assigned is as follows:

> The decision in the instant case affects thousands of cases; and while the amount involved can not be calculated in a definite sum, it will run into millions of dollars.

In petitioners' brief (p. 8) under heading "Conclusion" there appears an averment to substantially the same effect.

These statements are devoid of support in the record or in fact. Counsel as officers of the court unhesitatingly express their conviction that this is not a "test case" but on the contrary an anomalous one. It has always been the custom of the Bureau of Internal Revenue under the Revenue Act of 1921, which was the first revenue act to provide for the payment of interest upon refunds, to pay the interest upon the refund at the same time the tax was refunded and in fact to include the interest in the same check by which the tax was refunded. Finding of Fact

XI (R. 28, 29) and Finding of Fact XII (R. 29, 30) each conclude with the statement, "Interest status will be determined as soon as the necessary data can be assembled." This was added in typewriting to the printed form. Note Exhibit "A" attached hereto, which is a photostatic copy of the original certificate of overassessment embodied in Finding of Fact XII. It there appears the printed form stated "Included in the accompanying check is interest in the amount stated below, allowed on the refund or credit, from date," and that there appears below in the left corner the word "Interest" with space provided in which to insert the amount. It also appears from Exhibit "A" that on this original certificate of overassessment the printed words just quoted have been ruled through and the statement in respect of interest status being determined later has been added by typewriter. Thus it is apparent the printed form of certificate of overassessment, prepared to meet the requirements of the usual and ordinary case, shows that the practice in the Bureau of Internal Revenue was to refund taxes and the interest thereon at the same time and by one check. The record is silent as to why this practice was not followed in the instant case, the departure from which required the alteration of the regular printed form of certificate of overassessment. Thus in the instant case the usual procedure was not followed but an unusual one. Clearly, this case cannot affect "thousands of cases" as stated in the petition. Government counsel seem to rashly conclude that every case arising under the revenue laws must necessarily be a "test case" and

its determination involve many millions of dollars. That this is not always so is illustrated by the instant case, which is in no sense a "test case."

Referring now to the brief in support of the petition.

We submit "The Question Presented," appearing on the second page of petitioners' brief, would be fairer were the word "computation" in the sixth line thereof stricken out and the word "allowance" inserted in lieu thereof, so that the statement would read as follows:

The Question Presented.

> The principal question is whether interest on refunds of taxes should be computed on the basis prescribed by the Revenue Act of 1921, or on that prescribed by the Revenue Act of 1924, where the refund was allowed and the principal paid while the 1921 Act was in effect but the allowance and payment of the interest was delayed until after the passage of the 1924 Act.

Under the heading "The Statutes Involved" (p. 2), petitioners' counsel fail to refer to the express repeal, and without a saving clause, of section 1324 of the Revenue Act of 1921, by section 1100(a) of the Revenue Act of 1924 (c. 234, 43 Stat. 253, 352). The effect of this repeal and the simultaneous reenactment of certain parts of section 1324 of the Act of 1921 by section 1019 of the 1924 Act, together with new provisions, are discussed under "A" in the argument which follows:

Petitioners' sole contention in this case is that interest upon the refunds made respondent should be determined in accordance with the provisions of the Revenue Act of 1921, whilst respondent insists the payment of interest must be made under the terms of the Revenue Act of 1924, as the Court of Claims held. If, in fact, interest had been "allowed" respondent by the Commissioner of Internal Revenue whilst the Revenue Act of 1921 was in force, it would obviously be quite helpful to petitioners' case. With the above in mind note the following appearing under the heading "Statement" in petitioners' brief (p. 4):

> On January 18, 1924, the Commissioner of Internal Revenue notified the plaintiff that interest had been allowed in the sum of $34,737.15, computed in accordance with Section 1324 of the Revenue Act of 1921, then in force (R. 31).

The above statement that interest "had been allowed" respondent by the Commissioner in his letter of January 18, 1924, is not correct. The quoted statement is an averment that there was an allowance of interest to respondent whilst the Revenue Act of 1921 was in force, which is shown by the record to be untrue. An examination of the communication of the Commissioner referred to (Finding of Fact XIII, R. 30-31) shows there was merely a calculation of interest but not a final allowance. Instead, respondent was invited by the Commissioner to file brief in support of its contentions in opposition to the amount of interest there calculated (R. 32). Fur-

ther, the amount of interest actually and officially "allowed" on July 21, 1924, *whilst the Revenue Act of 1924 was in force*, was not that stated in the Commissioner's letter of January 18, 1924, but $35,369.05. This is shown by the official "Notice of Interest Allowance" for each of the years involved (R. 34, 35).

On page 5 of petitioners' brief there is set forth an alleged copy of the protest which accompanied the payment of taxes by petitioner for the year 1917. The copy of the protest there given is incomplete in that the last sentence is omitted. A correct copy of such protest is embodied in Finding of Fact V (R. 25).

Petitioners' counsel state in their brief (p. 6) as follows:

> The Court of Claims found that this protest was general in terms and not specific or detailed (R. 32), and that the protest did not specify the basis on which the refund for the year 1917 was afterwards claimed and made (R. 32-33).

The Court of Claims did not so find. On the contrary, that court found that respondent had accompanied its payment of taxes for the year 1917 by "a written specific protest which set forth in detail the basis of and reasons for such protest" (Finding of Fact V, R. 25), which particular finding is the subject of petitioners' second assignment of error (R. 5) as follows:

> In holding that the letter set forth in the court's special findings of fact V was a written

specific protest which set forth in detail the basis of and reasons for such protest.

Counsel evidently failed to realize that the concluding paragraph of Finding of Fact XV (R. 32) was part of the letter of the Commissioner of Internal Revenue of February 9, 1924, and that the facts stated in such letter were not found by the court below. Closing quotation marks are placed at the end of the next to last paragraph whereas they should appear at the end of the last paragraph of Finding of Fact XV (R. 32). The letter of the Commissioner of Internal Revenue embodied in Finding of Fact XV is correctly set forth as Exhibit "F" of respondent's second amended petition (R. 20-22). Thus it was the Commissioner of Internal Revenue who held the protest insufficient. The Court of Claims, as shown by Finding of Fact V (R. 25), held to the contrary.

In the quotation from the Revenue Act of 1921, appearing in the second paragraph on page 7 of petitioners' brief, the word "specified" should be "specific" and the article "the" appearing before the word "reasons" should be omitted.

STATEMENT.

Because of errors and omissions in petitioners' "Statement" (petitioners' brief, p. 4), respondent submits the following:

Briefly the essential facts are:

Respondent paid federal income and income and

profits taxes as follows: (Finding of Fact II, R. 24 and Finding of Fact V, R. 25)

For the year 1916, income taxes	$ 215,852.72
For the year 1917, income and profits taxes	1,966,600.87
Total tax for the two years	$2,182,453.59

The taxes for the year 1916 were not paid under protest (Finding of Fact II, R. 24); those for the year 1917 were paid under protest (Finding of Fact V, R. 25).

Respondent filed refund claims within the time prescribed by law in respect of taxes for each of the above years as follows:

For the year 1916: On June 17, 1918, a second amended return, which showed respondent had overpaid its taxes in the amount of $30,217.11, was filed with the Commissioner of Internal Revenue and was attached to and made a part of a refund claim in that amount (Finding of Fact III, R. 24). Thereafter a "third amended return was attached to and made a part of a refund claim which was filed with the Collector of Internal Revenue at Dallas, Texas, on September 20, 1920, as aforesaid, and was for the refundment of $114,565.44, 'or such greater amount as is legally refundable'" (Finding of Fact IV, R. 24).

For the year 1917: On June 12, 1920, respondent duly filed with the Collector of Internal Revenue a refund claim for $1,966,600.87, being the full amount of taxes which it paid for said year (Finding of Fact

VI, R. 26), and "Thereafter, to wit, on September 20, 1920, plaintiff filed with the aforesaid collector of internal revenue another refund claim on account of the year 1917 for the sum of $1,005,519.42, 'or such greater amount as is legally refundable.' There were attached to such claim and made a part thereof, third amended income and excess-profits tax returns for the calendar year 1917, which indicated a total income and war excess-profits tax liability on the part of plaintiff for the year 1917 in the amount of $961,081.45." (Finding of Fact VI, R. 27).

At this point Findings of Fact VII and VIII (R. 27) become pertinent. They are respectively as follows:

> Shortly after plaintiff, on September 20, 1920, filed its aforesaid refund claims for the years 1916 and 1917 of which claims a third amended return for each of such years was made a part, plaintiff, by its proper representatives actively negotiated with officials of the Bureau of Internal Revenue to secure settlement of its taxes for the years 1916 and 1917 and refunds of overpayments which it had made for said years.
>
> Plaintiff furnished to the proper representatives of the Bureau of Internal Revenue all necessary facts and data in support of its refund claims theretofore filed for the years 1916 and 1917 and in a manner acceptable to the officials of said bureau and in accordance with its rules and regulations.

Thus it is shown respondent filed two refund claims for each of the years involved and the second refund claim for each year filed on September 20, 1920, had

attached thereto and made a part thereof, third amended returns.

Under date of October 8, 1923, the Commissioner of Internal Revenue advised respondent in respect of its refund claims for these years as follows:

> The claim for refund of $114,565.44 income taxes for the year 1916 will be allowed for $105,571.95 and rejected for $8,993.49, and the claim for refund of $1,966,600.87 income and excess profits tax for 1917 will be allowed for $1,131,075.86 and rejected for $835,525.01. The claims for refund of $30,217.11 income taxes for 1916 and $1,005,519.42 income and profits taxes for the year 1917 will be rejected in full.
>
> The rejection of the claims in the above amounts will appear officially in the next schedule to be approved by the commissioner (Finding of Fact IX, R. 27).

The court below found as a fact that respondent's claims were allowed by the Commissioner of Internal Revenue in the respective amounts given above, on October 11, 1923 (Finding of Fact X, R. 28).

The above action was followed by the receipt by respondent on November 22, 1923, of an official "Certificate of Overassessment" in respect of each of these years, showing an overassessment in the respective amounts shown above. Each of these certificates stated:

> This overassessment is allowed in connection with the examination of a claim for refund filed by you within the required time as pre-

scribed * * * (Findings of Fact XI and XII, R. 28, 29).

There accompanied the above mentioned certificates of overassessment government check in payment of the amount in which, as shown, respondent had been advised by the Commissioner, the refund claims had been "allowed," such amounts being as follows: (Finding of Fact XIII, R. 30):

For the year 1916, income taxes	$ 105,571.95
For the year 1917, income and excess profits taxes	1,131,075.86
Total tax refunded	$1,236,647.81

No interest was paid plaintiff at the time of the above mentioned refund. The certificates of overassessment each concluded with the statement that "Interest status will be determined as soon as the necessary data can be assembled" (Finding of Fact XI, XII, R. 28, 29).

About two months after the refundment which, as shown, was made on November 22, 1923, as a result of the "allowance" of respondent's claims, the Commissioner of Internal Revenue took the position that interest could only be paid upon a refund to the extent that it was predicated on the "basis of the claim." As shown by Finding of Fact XIII (R. 30, 31) under date of January 18, 1924, the Commissioner advised respondent that—

> Section 1324(a) of the revenue act of 1921 authorizes the payment of interest on amounts re-

> funded only upon the allowance of refund or credit claims. It is, therefore, held that if a refund is made subsequent to the filing of a refund claim that part of the overassessment which is based upon the ground or basis of the claim constitutes an allowance of the claim in that amount (upon which interest is payable), but that interest is not allowable upon any amount allowed other than on the basis of the claim, the latter amount being allowed under the general authority of section 252 of the revenue act, without reference to a claim having been filed.

The above is followed by a calculation of interest proposed to be allowed on the "basis of claim" theory but there is no explanation offered there nor elsewhere in the record as to what was the "basis of claim" nor how the proposed amount of interest was ascertained by the use of that theory. This position of the Commissioner of Internal Revenue was contrary to the established practice of the Bureau of Internal Revenue (Finding of Fact 20, R. 36).

The Commissioner of Internal Revenue persisted in his refusal to increase the amount of interest to be allowed [with the exception of a slight increase due to a mistake theretofore made by the Commissioner in regard to the date upon which one of the claims for the year 1917 was filed and corrected in the second paragraph of his letter to respondent dated July 2, 1924, contained in Finding of Fact XVI (R. 33)] and under date of July 21, 1924, sent to respondent a "Notice of Interest Allowance" in respect of each of the years 1916 and 1917 together with check in payment of the interest as shown by these certificates to have

been allowed in the total amount of $35,369.05 (Finding of Fact XVII, R. 35). The interest allowance in respect of the refund for each of the years involved is shown by these notices of interest allowance as follows:

Year 1916, Interest allowed on refund of $105,571.95	$19,171.21
Year 1917, Interest allowed on refund of $1,131,075.86	16,197.84
Total	$35,369.05

Respondent protected its rights to claim additional interest in the Treasury Department and in the courts (Finding of Fact IX, R. 11).

Counsel have prepared from facts in the record the two following tables, which show, it is hoped, in convenient and helpful form, the salient facts in respect of respondent's returns and refund claims and the action of the Commissioner of Internal Revenue upon the claims.

YEAR 1916

TABLE SHOWING FILING OF RETURNS AND REFUND CLAIMS BY RESPONDENT AND ACTION OF COMMISSIONER OF INTERNAL REVENUE UPON CLAIMS.

Tax Paid	$215,852.72
Tax refunded	105,571.95
Net tax	$110,280.77
Interest paid on refund	19,171.21

Returns Filed and Taxes Paid.	*Claims Filed.*	*Action of Commissioner upon the Claims as Shown by his Letter of Oct. 8, 1923, (Finding IX, R. 27) and by his certificate of Overassessment No. 118,905. (Finding XI, R. 28.)*	*Position of Commissioner in his Letter of Jan. 18, 1924. (Finding XIII, R. 30.)*
Mch. 27, 1917. *Original Return* showing tax of $206,079.86. Paid June 14, 1917. (Finding II, R. 24.)			
June 15, 1917. *First Amended Return* showing additional tax of $9,772.86. Paid under "additional assessment" August 7, 1917. (Finding II, R. 24.)			
June 17, 1918. *Second Amended Return* showing overpayment of $30,217.11. (Finding III, R. 24.)	June 17, 1918, with Second Amended Return. (Finding III, R. 24.)	Rejected in full. (Finding IX, R. 27.)	Said to be allowed for $22,360.22.*
September 20, 1920. *Third Amended Return* showing tax liability of $101,287.28. (Finding IV, R. 24.)	Sept. 20, 1920, with *Third Amended Return*. Claim for $114,565.44, "or such greater amount as is legally refundable." (Finding IV, R. 24.)	Allowed for $105,571.95* (total refund for year 1916) and rejected for $8,993.49. (Finding X, R. 28.)	Said to be allowed for $82,853.32.*
		*Refunded November 22, 1923.	*Balance of 1916 refund, viz., $358.41, said to be "allowed upon the basis of points not raised in claims." (Finding XIII, R. 30.)

YEAR 1917

TABLE SHOWING FILING OF RETURNS AND REFUND CLAIMS BY RESPONDENT AND ACTION OF COMMISSIONER OF INTERNAL REVENUE UPON CLAIMS.

Tax paid	$1,966,600.87
Tax refunded	1,131,075.86
Net tax	835,525.01
Interest paid on refund	16,197.84

Returns Filed and Taxes Paid.	*Claims Filed.*	*Action of Commissioner Upon the Claims as Shown by his Letter of Oct. 8, 1923 (Finding IX, R. 27) and by his Certificate of Overassessment No. 16,566 (Finding XI, R. 28).*	*Position of Commissioner in his Letter of January 18, 1924 (Finding XIII, R. 30).*
May 18, 1918. *Original Returns.* No tax paid thereunder. (Finding V, R. 25.)			
May 27, 1918. *First Amended Returns* showing tax of $1,966,600.87. Paid June 13, 1918, under protest. (Finding V, R. 25.)	June 12, 1920. Claim for $1,966,600.87. (Finding VI, R. 26.)	Allowed for $1,131,075.86* (total refund for year 1917). Rejected for $835,525.01.	Said no part of overassessment was allowed on basis of this claim.
January 28, 1919. *Second Amended Returns* showing additional tax of $5,390.17. *Never paid.* (Finding V, R. 25.)			
September 20, 1920. *Third Amended Returns* which showed tax liability of $961,941.45. (Finding VI, R. 27.)	September 20, 1920. Claim for $1,005,519.42 "or such greater amount as is legally refundable" filed with Third Amended Returns. (Finding VI, R. 27.)	Rejected in full.	Said to be allowed for $105,556.34*.
		*Refund made November 22, 1923.	*Balance of 1917 refund, viz., $1,025,519.52, made November 22, 1923, said to be "attributable to points not raised in claims." (Finding XIII, R. 30.)

ARGUMENT.

The petition should be denied because:

A.

RESPONDENT, AS HELD BY THE COURT BELOW, IS ENTITLED TO INTEREST UNDER SECTION 1019 OF THE REVENUE ACT OF 1924 UPON THE TOTAL REFUNDS FROM THE DATES THE TAXES WERE PAID TO THE DATE OF THE ALLOWANCE OF THE CLAIMS.

There are no authorities cited in petitioner's brief.

The refunds, as has been shown, were made on November 22, 1923. At that time the Revenue Act of 1921 (c. 136, 42 Stat. 227) was in force. Section 1324(a) thereof (p. 316) provided as follows:

> That upon the allowance of a claim for the refund of or credit for internal revenue taxes paid, interest shall be allowed and paid upon the total amount of such refund or credit at the rate of one-half of one per centum per month to the date of such allowance, as follows: (1) if such amount was paid under a specific protest setting forth in detail the basis of and reasons for such protest, from the time when such tax was paid, or (2) if such amount was not paid under protest but pursuant to an additional assessment, from the time such additional assessment was paid, or (3) if no protest was made and the tax was not paid pursuant to an additional assessment, from six months after the date of filing of such claim for refund or credit. The term "additional assessment" as used in this section means a further assessment for a tax of the same character previously paid in part.

The above section was in force from November 23, 1921, to June 2, 1924. On the latter date the section

was expressly repealed by section 1100(a) of the Revenue Act of 1924 (c. 234, 43 Stat. 253, 352) to take effect upon the enactment of that act which occurred on June 2, 1924. An examination of section 1100 of the Revenue Act of 1924 shows the absence of a saving clause in respect of section 1324 of the Revenue Act of 1921 pertaining to the payment of interest upon refunds. Section 1100(b) of the 1924 Act contains the usual saving clause in respect of the assessment and collection of taxes imposed by the earlier act. The provision for the payment of interest upon refunds in the Revenue Act of 1924 is contained in section 1019 thereof as follows:

> Upon the allowance of a credit or refund of any internal revenue tax erroneously or illegally assessed or collected, or of any penalty collected without authority, or of any sum which was excessive or in any manner wrongfully collected, interest shall be allowed and paid on the amount of such credit or refund at the rate of 6 per centum per annum from the date such tax, penalty, or sum was paid to the date of the allowance of the refund, or in case of a credit, to the due date of the amount against which the credit is taken, but if the amount against which the credit is taken is an additional assessment, then to the date of the assessment of that amount. The term "additional assessment" as used in this section means a further assessment for a tax of the same character previously paid in part. (43 Stat. 346).

The Committee on Ways and Means in House Report No. 179, 68th Congress, 1st Session, on H. R.

6715 which became the Revenue Act of 1924, after pointing out the changes made by section 1019 said: (p. 35)

> If the amounts in question were not legally owing to the Government, it is equitable that the Government should pay a reasonable rate of interest during the period of their retention; and the fact of protest or a claim does not affect the merits of such an interest payment.

The same paragraph also appears in the report which is appended to the majority committee report and which contains the "Views of Eleven Republicans." (See p. 72).

It will be remembered the Commissioner of Internal Revenue made respondent no allowance of interest whilst the Revenue Act of 1921 was in force. On July 21, 1924, which was after the enactment of the Revenue Act of 1924, the Commissioner made respondent an interest allowance which he asserted was made under section 1324(a) of the Revenue Act of 1921, a section which, as shown, had theretofore been expressly repealed.

Whilst section 1324(a) of the Revenue Act of 1921 limited the right of recovery of interest to "the allowance of a claim for the refund of or credit for internal revenue taxes paid," section 1019 of the 1924 Act broadened that right by taking language from section 3220, Rev. Stat., as amended by the Act of 1918 (c. 18, 40 Stat. 1057, 1145) so as to cover "any internal revenue tax erroneously or illegally assessed or collected, or of any penalty collected without au-

thority, or any sum which was excessive or in any manner wrongfully collected," the interest to run "from the date such tax, penalty or sum was paid to the date of the allowance of the refund." Those are the principal omissions from, additions to or modifications made in section 1019 of the latter act as compared with section 1324(a) of the former one but the grant of interest at 6 per cent per annum is the same in each section. That right was continued uninterruptedly by section 1019 of the 1924 Act. We submit that the provisions of the earlier act which were not reenacted died—they were annulled—and that hence neither the Commissioner of Internal Revenue nor anyone else could thereafter lawfully act thereunder.

In the case of Blair, Commissioner of Internal Revenue v. United States *ex rel.* Birkenstock, *et al.*, 6 Fed. (2d) 679, the Court of Appeals of the District of Columbia held interest upon a refundment of taxes must be made in accordance with the provisions of the law in force at the time the interest was allowed. Whilst there is a difference between that case and the instant one, in that under the decision of this Court, to which the case was brought by writ of certiorari, the allowance of the claim for refund was made after the enactment of the Revenue Act of 1924 and in the instant case prior thereto, nevertheless, since, as we shall presently show, the right to recover interest under a statutory grant, is a right separate and distinct from the right to recover the principal, we submit the Birkenstock case is decisive of the instant case. In its opinion in the Birkenstock case the Court of Appeals of the District of Columbia stated (p. 681):

> We agree with the judgment of the lower court. The record discloses that no finding or order respecting the payment of interest upon the refund was made, or could have been made, by the Commissioner until June 30, 1924, at which time the collector at Philadelphia reported the result of his examination. But before that time Congress repealed section 1324(a) of the Revenue Act of 1921; consequently the Commissioner was no longer authorized to proceed under it. After the repeal, his sole authority to order the disbursing clerk to pay interest upon such refunds was derived from section 1019 of the Revenue Act of 1924. Consequently the provisions of that section were controlling, and the interest upon this refund should have been computed accordingly.

The above quoted portion of the opinion was approved by this court (271 U. S. 348, 350).

The record in the instant case discloses that the Commissioner of Internal Revenue did not order the disbursing clerk to pay interest upon the refund until subsequent to the enactment of the Revenue Act of 1924. As shown by Finding XVI, (R. 33, 34) the Commissioner on July 2, 1924, advised respondent through its counsel in respect of the amount of interest which would be allowed and concluded his letter by stating, "The interest found due *will* be scheduled for allowance and payment." Hence the Commissioner's order to the disbursing clerk to pay this interest of necessity was subsequent to the date of such letter and more than a month subsequent to the passage of the Revenue Act of 1924,

at a time when, in the language of the Court of Appeals of the District of Columbia in the Birkenstock case, "* * * his sole authority to order the disbursing clerk to pay interest upon such refunds was derived from section 1019 of the Revenue Act of 1924." As shown by the quotation given above, the Court of Appeals held that the provisions of the 1924 Act under such facts were controlling and this conclusion, as also shown above, was approved by this court upon appeal. As well stated by the court below (R. 40):

> The final determination and allowance and also the payment of interest occurred after the act of 1924 became effective, at which time the sole existing provision of law for the payment of interest on refunds was that contained in section 1019 of the act of 1924.

In the case of Girard Trust Co., *et al.* v. United States, 270 U. S. 163, it was contended on behalf of the government that the interest provided by the Revenue Act of 1921 was an incident to the recovery of the principal, *i. e.*, the tax. In denying this contention this court said (pp. 168, 169):

> "In this case there is statutory provision for it," (the interest) "and it is analogous to a suit in debt or covenant in which the contract specifically provides for payment of interest on the principal debt. In such cases the authorities all hold that the acceptance of the payment of the principal debt does not preclude a further suit for the interest unpaid. * * * And the same rule obtains where the obligation is one that by

statute bears interest * * *" citing numerous authorities.

See also—

Bank v. Bank, 94 U. S. 437;
33 Corpus Juris 183;
39 Cyc. 768.

The Commissioner when he allowed interest to respondent on July 21, 1924, should have been governed solely by section 1019 of the Revenue Act of 1924 which contained the only statutory provisions then in force in respect of the payment of interest upon refunded taxes.

We invite attention to the following by Mr. Justice Peckham, speaking for the court in the case of Bear Lake Irrigation Company v. Garland, 164 U. S. 1, 11, 12, which case and those which followed it, cited below, we submit are controlling in the instant case:

> Upon comparing the two acts of 1888 and 1890 together, it is seen that they both legislate upon the same subject, and in many cases the provisions of the two statutes are similar and almost identical. Although there is a formal repeal of the old by the new statute, still there never has been a moment of time since the passage of the act of 1888 when these similar provisions have not been in force. Notwithstanding, therefore, this formal repeal, it is, as we think, entirely correct to say that the new act should be construed as a continuation of the old with the modification contained in the new act. This is the same principle that is recognized and asserted in Steam-

ship Co. v. Joliffe, 2 Wall. 450, 459. In that case there was a repeal in terms of the former statute, and yet it was held that it was not the intention of the legislature to thereby impair the right to fees which had arisen under the act which was repealed. As the provisions of the new act took effect simultaneously with the repeal of the old one, the court held that the new one might more properly be said to be substituted in the place of the old one, and to continue in force, with modifications, the provisions of the old act, instead of abrogating or annulling them and re-enacting the same as a new and original act.

It is true that the law in the Joliffe case did not contain any saving of or provision for the rights and remedies of the pilot, but the foundation of the reasoning by which the court concluded that the new should be treated as a continuation of the old statute, with modifications, did not rest alone upon this omission. It was chiefly based upon the facts above stated: the similarity of the subjects-matter of the two statutes, and that the effect was a continuation of the old statute as modified by the new, notwithstanding the use of language which formally repealed the old statute.

Again as this court stated in Stewart v. Kahn, 11 Wall. 493, 502:

It is a rule of law that where a revising statute, or one enacted for another, omits provisions contained in the original act, the parts omitted can not be kept in force by construction, but are annulled.

This was followed by the famous case of Murdock v. City of Memphis, 20 Wall. 590. There the court said (p. 617):

> A careful comparison of these two sections (set forth in parallel columns, *supra*, pp. 592, 593—Rep.) can leave no doubt that it was the intention of Congress, by the later statute, to revise the entire matter to which they both had reference, to make such changes in the law as it stood as they thought best, and to substitute their will in that regard entirely for the old law upon the subject. We are of opinion that it was their intention to make a new law so far as the present law differed from the former, and that the new law embracing all that was intended to be preserved of the old, omitting what was not so intended, became complete in itself and repealed all other law on the subject embraced within it. The authorities on this subject are clear and uniform.

See also—

Campbell v. California, 200 U. S. 87.
Blair v. Chicago, 201 U. S. 400.
Goublin v. United States, Circuit Court of Appeals, Ninth Circuit, 261 F. 5.
Great Northern Ry. v. United States, Circuit Court of Appeals, Eighth Circuit, 155 F. 945.
Pennsylvania Co. v. United States, 236 U. S. 351.
Sutherland on Statutory Construction (2d Ed.) Sec. 237.

By the Revenue Act of 1926 (c. 27, 44 Stat. 9) there were changes made in respect of the payment of in-

terest upon refunded taxes but no change was made which would affect the payment of interest to respondent. See section 1116. The determination of the amount of interest due respondent under the Revenue Act of 1924 or under the Revenue Act of 1926 would be in identically the same amount as that for which the court below entered judgment. The repeal, therefore, by section 1200 of the 1926 Act of section 1019 of the 1924 Act is without effect in respect of the interest to which respondent is justly entitled.

The grant of interest can become effective only by its actual payment. The amount of such payment cannot be determined by the terms of a dead statute but must be ascertained in compliance with the terms of the only living statute on the subject.

We submit the soundness of this point has been demonstrated.

B.

EVEN THOUGH SECTION 1324(A) OF THE REVENUE ACT OF 1921 WERE APPLICABLE AS ALLEGED BY THE COMMISSIONER OF INTERNAL REVENUE, RESPONDENT HAS FULLY MET THE REQUIREMENTS OF THAT SECTION.

We repeat section 1324(a) of the Revenue Act of 1921:

> That upon the allowance of a claim for the refund of or credit for internal revenue taxes paid, interest shall be allowed and paid upon the total amount of such refund or credit at the rate of one-half of 1 per centum per month to the date of such allowance, as follows: (1) if such amount was paid under a specific protest setting forth in detail the basis of and reasons for such protest, from the time when such tax was paid, or

(2) if such amount was not paid under protest but pursuant to an additional assessment, from the time such additional assessment was paid, or (3) if no protest was made and the tax was not paid pursuant to an additional assessment, from six months after the date of filing of such claim for refund or credit. The term "additional assessment" as used in this section means a further assessment for a tax of the same character previously paid in part.

A mere glance at that statute and the briefest consideration of the outstanding facts and a little mental arithmetic disclose at once a thwarting by the Commissioner of Internal Revenue of the legislative command to the serious financial detriment of respondent. We will demonstrate: As appears from the statute the shortest period of time for which interest could run would be from six months after filing refund claim to the date of the allowance of the claim and it also appears that interest is at the rate of one-half of 1 per centum per month and the interest is upon "the total amount of such refund." Thus we have the minimum period the interest may run, the principal and the rate of interest. In the instant case the latest claims were filed on September 20, 1920. Six months thereafter was March 20, 1921. The date of the allowance was October 11, 1923. Thus the minimum interest period was 2 years, 7 months and 21 days, or 31 months and 21 days, which at one-half of 1 per centum per month is over 15%. The total refund was $1,236,687.81 and 15% thereof is $185,503.17. This is the lowest possible sum respon-

dent could be entitled to under the Revenue Act of 1921. (As a matter of fact the record shows respondent was entitled to interest in an amount greatly in excess of this minimum). The Commissioner of Internal Revenue allowed and paid respondent interest in the amount of $35,369.05. Again, consider alone the refund of $1,131,075.86 for the year 1917 upon which the Commissioner paid respondent interest in the sum of but $16,197.84. This interest payment represents interest upon the allowed amount for less than four months, whereas the minimum period as shown above was over 31 months. It was these flagrant invasions of respondent's rights which the judgment of the Court of Claims corrected.

Adverting again to section 1324(a) of the Revenue Act of 1921 it will be noted the sole requirement in order that a taxpayer "shall" obtain interest is that there be an "*allowance of a claim* for the refund of or credit for internal revenue taxes paid." This sole requirement has been squarely met in this case. By the Commissioner's letter of October 8, 1923, (Finding of Fact IX, R. 27) respondent was informed that "the claim for refund of $114,565.44, income taxes for the year 1916, *will be allowed* for $105,571.95 and rejected for $8,993.49," and that "the claim for refund of $1,966,600.87 income and profits tax for 1917 *will be allowed* for $1,131,075.86 and rejected for $835,525.01." With regard to the overassessments (the amounts for which claims were allowed) the Commissioner stated in the certificate of overassessment sent to the respondent (Findings of Fact XI and XII, R. 28, 29) that each over-

assessment is "*allowed* in connection with the examination of a *claim for refund* filed by you within the required time as prescribed by section 3228 of the Revised Statutes as amended by section 1316 of the Revenue Act of 1921." These certificates of overassessment were accompanied by a Treasury warrant in full settlement of exactly the amount which respondent was informed that its "*claim*" would be "*allowed*" for and in exactly the amount which respondent was officially informed its *claims* had been "*allowed*" for. Accordingly there has been "*an allowance of a claim*" which secured to respondent the right to receive interest, in the words of section 1324(a), upon the "*total amount of such refund.*" The provision respecting the payment of interest upon the "*total*" amount of the refund is mandatory and grants no authority to the Commissioner of Internal Revenue or any other officer of the government to base the interest payment upon any other amount.

The Commissioner's letter of October 8, 1923, (Finding of Fact IX, R. 27) unequivocally states precisely what disposition will be made of the four claims therein referred to—two for the year 1916 and two for the year 1917. It points out that the claim for $30,217.11, which was filed on June 17, 1918, with the second amended return for the year 1916, will be rejected in full. It advised respondent that its claim of September 20, 1920, for $1,005,519.42 on account of the year 1917 will likewise be rejected in full. It then states that the claim of September 20, 1920, which was for the refundment of $114,565.44, the amount of tax which had been paid for the

year 1916, "will be allowed for $105,571.95 and rejected for $8,993.49," and further, that "the claim for refund of $1,966,600.87 income and excess profits tax for 1917 will be allowed for $1,131,075.86 and rejected for $835,525.01." Everyone knows that when a claim is presented to the Commissioner of Internal Revenue there can be but one of three actions taken thereon, (a) it may be allowed in full, (b) it may be rejected in full and (c) it may be allowed in part and rejected for the balance.

Three days after the above mentioned letter from the Commissioner of Internal Revenue to respondent the Commissioner "allowed" the two claims referred to in the amounts of which he had advised respondent. This also appears in the Commissioner's letter of January 18, 1924, to respondent (Finding of Fact XIII, R. 30). On November 22, 1923, still acting in accordance with the letter of October 8, 1923, the Commissioner of Internal Revenue actually refunded to respondent the precise sums which he had informed respondent by his letter of October 8, 1923, would be refunded to it upon the refund claims which it had filed.

The command of the statute is there in unmistakable terms "that upon the *allowance of a claim* * * * *interest* shall be allowed and paid upon the *total* amount of such refund * * *." Could any statute be more clear or explicit?

So we find this respondent in good faith presenting its claims and submitting evidence in support thereof in accordance with the rules of the Bureau. Then it was informed its claims would be allowed,

followed, three days later by an official allowance. Less than one and a half months later respondent received a check without interest in the amount that it was advised its claims would be allowed for and in the amounts its claims actually were allowed for.

Clearly the requirements of the statute had been fully met. After the requirements had been so met and the refunds made the Commissioner in attempting to justify his changed position which resulted in a reduction of interest payment to respondent from $401,168.47 (total of judgment below and interest paid July 21, 1924) to $35,369.05, stated in his letter of July 2, 1924, to respondent that "The fact that the certificates of overassessment recited that the refunds were based upon the taxpayer's claim is not controlling for interest purposes." (Finding of Fact XVI, R. 33). We find the Commissioner in his letter of January 18, 1924, to respondent, (Finding of Fact XIII, R. 30) contradicting his former official communications in respect of which claims had been allowed. No explanations are offered for this extraordinary effort on the part of the Commissioner to undo accomplished facts. So also we find the Commissioner silent in respect of what is meant by the "basis of claim" invoked in his above mentioned letter of January 18, 1924, to respondent. The record shows amended returns were made a part of the refund claims and thus every item of gross income and every item of deduction was included in the claims but this seems to have been unavailing. The absence from the record of facts to sustain this "basis of claim" theory is fatal. It is a defense affirmatively

asserted and hence the burden was upon petitioner to support it. (Roach v. Summers, 87 U. S. 165.)

Under section 1324(a) of the Revenue Act of 192 interest upon a refund begins to run from the dat of payment of the tax if the tax was paid "under specific protest setting forth in detail the basi of and reasons for such protest." The cour below found that "The payment was made in voluntarily, under duress and in order to avoi distraint proceedings by the collector agains plaintiff's property and the payment of sai taxes by plaintiff was accompanied by a writ ten specific protest which set forth in detail th basis of and reasons for such protest" (Finding o Fact V, R. 25). It may be added that among othe averments respondent's protest stated that the term of the taxing statute were "ambiguous" and that th regulations were not authorized by the statute an that the method of applying the rates of tax in suc regulations was "arbitrary and unjust and withou sanction in said act" (Finding of Fact V, R. 25) In this connection note the nineteenth finding by th Court of Claims (R. 35):

> "Regulations No. 33 (revised) governing th collection of the income tax imposed by the ac of September 8, 1916, as amended by act o October 3, 1917," promulgated January 2, 191 were vague and ambiguous, especially in refer ence to depletion, inventories, and depreciatio so that it was impossible for plaintiff when i filed its first amended return on May 27, 191 to correctly calculate the amount of depletio and depreciation deductions to which plaintif

was entitled under the law and it was likewise impossible for plaintiff, because of the aforesaid conditions of said regulations, to correctly calculate its opening and closing inventories and the conditions aforesaid continued up to and subsequent to the date of payment of said tax for said year.

The protest and findings of fact in the instant case fully meet the requirements of the statute as construed by the court in Girard Trust Co., *et al.* v. United States, 270 U. S. 163. The court there states (pp. 172-3):

> The Government's contention is that the distinction made in sec. 1324, by which the interest to be paid on refunded taxes is to date from the payment of the taxes in cases where there is a specific protest setting forth in detail the basis and reasons for such protest, and by which the interest is to be dated only from six months after date of filing the claim for refund or credit when there is no protest, was intended to favor those who furnished to the collecting officers by way of specific protest a valid basis for a refund of the taxes.
>
> We agree with this view. To hold otherwise would be to invite a protest on any pretended ground by taxpayers in every case of payment and would make the protest of no value to the Treasury or the collecting officers. A protest is for the purpose of inviting attention of the taxing officers to the illegality of the collection, so that they may take remedial measures at once. But if protests are based on reasons of no validity, they do not accomplish the public purpose for which they are devised.

> In the present case, the protest was based on a decision of the District Court of Connecticut made December 16, 1920. Brewster v. Walsh, 268 Fed. 207. That case was reversed in Walsh v. Brewster, 255 U. S. 536, March 28, 1921, or more than two months before the payment of the June 15 installment by the trustees. The statement added under the June 15 installment was merely a recital that an investigation was going on between the Government and the trustees, and that if that turned out to be in excess of the right amount, the payment was without prejudice to the recovery of the excess. This was certainly not a protest for specific reasons in accordance with the requirement of the statute. For these reasons, we think that no recovery can be had for failure to allow interest for the period of the six months after the date of payment.

In the petition it is stated if the Revenue Act of 1921 does apply the question remains

> Under sections 250, 252, and 1324(a) of the revenue act of 1921, was any interest payable on a refund allowed by the commissioner on his own motion and not on a ground assigned in the claim for refund? (R. 2)

Full discussion has heretofore been had of the basis of claim theory under section 1324 (a). In respect of sections 250 and 252 of the Revenue Act of 1921 relied upon by petitioners it is felt there is nothing which could more effectively dispose of petitioner's contentions thereunder than the following from the opinion of the court below. (R. 39)

These two sections have no connection whatever with a claim for refund, but are intended to relate to mistake in overpayment by the taxpayer appearing on the face of the return itself, discoverable by the examination provided for in section 250(b), directing the proper credit of such excess payment to taxes due by the taxpayer under any other return, "and any balance of such excess shall be *immediately* refunded to the taxpayer." They are based upon the correct theory that in the event of an overpayment of taxes by mistake, immediately discovered and corrected, the taxpayer should not be entitled to interest. But that is not the case here. In 1918 plaintiff filed claims for refund. These claims were pending and under investigation for five years or more when the commissioner made an allowance of refund amounting in the aggregate to $1,236,647.81, but denied interest on certain items concluded in the total amount refunded on the ground as stated in a letter to plaintiff, that "interest is not allowable upon any amount allowed, other than on the basis of the claim, the latter amount being allowed under the general authority of section 252 of the revenue act without reference to a claim having been filed.

In the enactment of the various statutes on the subject it must have been the general purpose of Congress to save the taxpayer from whom taxes have been illegally or erroneously collected from all loss by paying interest on the amount refunded during the whole time the money was illegally retained by the Government. No interest is provided under section 252, for the simple reason that the excess payment is immediately refunded, and there is consequently no loss to the taxpayer.

Such a situation is in no sense analogous to the case of a taxpayer whose excess payment was retained by the Government for more than five years and was finally discovered in an investigation resulting from the filing of a formal claim for refund.

C.

CONCLUSION.

It has been shown, we submit, under A of the argument that the judgment of the Court of Claims was right in awarding respondent interest under section 1019 of the Revenue Act of 1924 upon the refunds from the dates the taxes were paid to the date of the allowance of the claims, and under B that even if section 1324(a) of the Revenue Act of 1921 were applicable respondent has fully met its requirements.

BARRY MOHUN,
Washington, D. C.,
Attorney for Respondent.

W. H. FRANCIS,
Dallas, Texas,
Of Counsel.

Dated August 6, 1927.

EXHIBIT 'A'

TREASURY DEPARTMENT

WASHINGTON

Office of
COMMISSIONER OF INTERNAL REVENUE

CERTIFICATE OF
OVERASSESSMENT

Number: 18256

Allowed: $1,121,072.84

Rejected: 0

INCOME TAX UNIT
IT:RD:S-1252-4

Magnolia Petroleum Company,

Dallas, Texas.

Sirs:

An audit of your income tax return for 1919, Forms 1031 and 1300 and examination of related claim (if any), indicates that the amount of tax assessed to you for this year was in excess of the amount due:

Original assessment May 1919, Page 688, Line 21	$1,966,650.97
Tax liability	[illegible]
Overassessment	$1,121,072.84 ✓

The adjustments resulting in the above overassessment are fully explained in schedules attached to a separate communication to you.

This overassessment is allowed in connection with the examination of a claim for refund filed by you within the required time as prescribed by Section 3228 of the Revised Statutes as amended by Section 1316 of the Revenue Act of 1921.

The amount of the overassessment will be applied as follows:

1. If the tax has not been paid, the amount will be stated by the Collector of Internal Revenue for your district.

2. If the tax has been paid, the account of the overpayment will either be credited against the tax due (if any) on income returns of years other than that on which the overpayment was made; or

3. The balance (if any) of the overpayment is refunded to you by check of the Treasury Department, forwarded herewith.

~~Included in the overpayment shown is interest on the amount stated below allowed on the refund or credit, from date~~

Interest status will be determined as soon as necessary data can be assembled. ✓

Schedule Number: 7564
District: San Texas

Amount abated: 0
Amount credited: 0
Year:
Account Number: S/15/485/3
Amount refunded: $ 1,121,072.84
Interest:

Respectfully,

[illegible]
Executive
Oct. 30, 1923

J. S. [illegible],
Deputy Commissioner.

By (Signed) S. Alexander
Head of Division

U. S. Examiner
Collector 1st Dist.